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in the

Supreme Court

of the

United States

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CASE NO. 79-6261

JOEL JAFFER,
individually,

Appellant,

vs.

CITY OF MIAMI, a municipal corporation in the State of Florida; and HOLYWELL CORPORATION, a corporation with offices in Washington, D.C.,

Appellees.

On Appeal from the Supreme Court of Florida

APPELLEE HOLYWELL CORPORATION's MOTION TO DISMISS OR, IN THE ALTERNATIVE, TO AFFIRM

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INTRODUCTION

Holywell Corporation ("Holywell"), which is one of the appellees herein, moves this Court to dismiss this appeal or alternatively to affirm the order appealed from. The order appealed from rests on an adequate non-federal ground and the appeal does not present a substantial federal question.

On January 3, 1980, the Supreme Court of Florida dismissed eleven separate and unrelated cases in which the Appellant, Joel Jaffer,[1] was a party-appellant, because Jaffer had failed and refused to pay the required filing fees to that court in each case. Holywell was a party to only one of those cases,[2] and the present motion is directly solely to the part of the order of the Florida Supreme Court which dismissed that case.

STATEMENT OF THE FACTS

On May 24, 1979, the City Commission of the City of Miami, acting pursuant to the provisions of Section 380.06, *Fla. Stat.* (1979), entered a Development Order for a development of regional impact to be constructed on Holywell's property, which is located in the prime

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[1]The sequence of cases that culminated in this appeal were brought in the Florida courts in the name of "B.A.Y. Committee, Joel Jaffer, Chairman." The Appellant before this Court is Joel Jaffer, individually.

[2]The case was assigned Case No. 57,944 in the Supreme Court of Florida.

business area of Miami.[3] Jaffer was an unsuccessful objector at the City Commission hearing at which the Development Order was entered.

On or about May 24, 1979, B.A.Y. Committee, Joel Jaffer, Chairman, filed a paper entitled "Notice of Administrative Appeal" in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. That document purported to appeal the entry of the Development Order to the circuit court.

On June 21, 1979, the circuit court dismissed Jaffer's appeal on the grounds that it did not have jurisdiction to consider an appeal of the Development Order and that Jaffer had no standing to appeal the order in any event.[4] After Jaffer's motion for rehearing was denied, he appealed the circuit court's order to the district court of appeal of Florida, third district, but he did not pay the required filing fee to that court. Thus, on August 6, 1979, the clerk of the district court notified Jaffer that the appeal would be dismissed unless the filing fee was paid on or before August 20, 1979. Jaffer did not pay the fee, and on September 5, 1979, the district court, acting pursuant to Fla.R.App.P. 9.040(h), dismissed the appeal.

Jaffer next filed a notice, stating his intent to invoke the certiorari jurisdiction of the Supreme Court of Florida. Jaffer again did not pay the required filing fee. On October 22, 1979, the Clerk of the Supreme Court of Florida notified Jaffer that that court could not consider his case unless and until that court's filing fee

[3]The property is known as Ball Point and was the subject of prior litigation before this Court. *City of Miami v. St. Joe Paper Company*, 99 S.Ct. 2153 (1979).

[4]Appendix at 1-2.

was paid.[5] Jaffer failed and refused to pay the fee, and finally, on January 3, 1980, the Supreme Court of Florida entered an order dismissing Jaffer's petition for failure to pay filing fees.[6] This is the order to which the present appeal is addressed.

ARGUMENT

THE ORDER APPEALED FROM RESTS ON AN ADEQUATE NON-FEDERAL GROUND

It is impossible to glean a consistent legal theory from Jaffer's Statement of Jurisdiction, which is chiefly composed of a disjointed litany of legal platitudes and is devoid of principled analysis. However, in view of his reliance upon 28 U.S.C. §1257 (1970), Jaffer apparently is asserting that by entering the January 3 order the Supreme Court of Florida sustained the validity of

[5]On October 30, 1979, Holywell filed a motion to stay the proceedings until Jaffer paid the filing fee. On November 6, 1979, the Supreme Court of Florida granted the motion "for all purposes until 20 days after Petitioners have perfected their appeal by filing the requisite fee."

[6]The Florida Supreme Court dismissed the petition subject to reinstatement if the filing fee was received by January 11, 1980. The court did not receive the fee from Jaffer by that date, nor has it ever received it.

Section 57.081, *Fla. Stat.* (1979),[7] in the face of a contention by him that the statute violates the due process clause of the Fourteenth Amendment.[8]

However, at least as concerns Jaffer's appeal in this case, Jaffer has admitted that he has not heretofore

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[7]The statute provides in pertinent part that:

(1) Insolvent and poverty-stricken persons having actionable claims or demands shall receive the services of the courts, sheriffs, and clerks of the county in which they reside without charge. No prepayment of costs to any judge, clerk or sheriff in the county is required in any action when the party has obtained a certification of insolvency from the clerk in each action, based on affidavits filed with him that the applicant is insolvent and unable to pay the charges otherwise payable by law to any of such officers. The affidavits shall be supported by a written certificate signed by a member of the bar of the county that he has made an investigation to ascertain the truth of applicant's affidavit and that he believes it to be true; that he has investigated the nature of plaintiff's claim and that in his opinion it is meritorious as a matter of law; and that he has not been paid or promised payment of any remuneration for his service and intends to act as attorney for applicant without compensation. On the failure or refusal of the clerk to issue a certificate of insolvency, applicant is entitled to a review of his application for the certificate by the court having jurisdiction of the cause of action.

[8]U.S. CONST. amend. XIV, §1.

charged that Florida's insolvency statute is unconstitutional.[9]

Although the January 3 order was not accompanied by an opinion, it clearly was based on Fla.R.App.P. 9.040(h),[10] and not on the insolvency statute. It was totally unnecessary for the court to pass on the validity of the insolvency statute to reach the result it did. The rule provides for sanctions for failure to pay filing fees and that was the court's express reason for the dismissal. Jaffer's apparent contention that the court somehow implicitly passed upon the validity of the insolvency statute is simply not correct.

In fact, the Florida insolvency statute does not even apply to appellate proceedings. *Hillman v. Federal National Mortgage Association*, 375 So.2d 336 (Fla. 4th D.C.A. 1979).

Fla.R.App.P. 9.040(h) implements an earlier decision by the Supreme Court of Florida[11] which

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[9]*See* Statement on Jurisdiction at 14, where Jaffer states that "only the case against Richard Brinker [a separate case to which Holywell is not a party] directly contests the insolvency statute . . . ."
Holywell, of course, expresses no opinion on the legal effect of the Florida court's order insofar as it disposed of the ten other cases which were consolidated with Holywell's case for purposes of the order and this appeal. *See* text accompanying note 2, *supra*.

[10]"Non-Jurisdictional Matters. Failure of a clerk or a party timely to file fees or additional copies of notices or petitions shall not be jurisdictional; provided that such failure may be the subject of appropriate sanction."

[11]*Williams v. State*, 324 So.2d 74 (Fla. 1975).

expressly authorized the sanction of dismissal of an appellate proceeding for failure to pay filing fees, provided that reasonable notice is given to the appellant.[12] Jaffer was, of course, given reasonable notice and an opportunity to cure the problem.[13]

Jaffer has never contended that Fla.R.App.P. 9.040(h) is repugnant to the constitution, treaties or laws of the United States. Therefore, the January 3 order rests on an adequate non-federal ground and is not reviewable by this Court.[14]

THE APPEAL DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION

Even if Jaffer had properly and in a timely manner challenged the constitutional validity of Florida's insolvency statute, this appeal would not present a substantial federal question.

In *Ortwein v. Schwab*, 410 U.S. 656 (1973), this Court held that an Oregon statute which required payment of a filing fee for civil appeals did not violate the due process clause of the Fourteenth Amendment when applied to indigents seeking to appeal an adverse decision by a county agency. The Court stressed the fact

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[12]*See* Committee Notes to Fla.R.App.P. 9.040(h) (1977).

[13]As noted in the Statement of Facts, *supra* at 3, the Clerk of the Supreme Court of Florida notified Jaffer on October 22, 1979, that the court could not hear his case until he paid the filing fees. More than two months later, the court dismissed Jaffer's case.

[14]28 U.S.C. §1257 (1970).

that procedural due process requirements were satisfied because the appellants had had a hearing before the county agency.[15] The Court reiterated its longstanding rule that "due process does not require a State to provide an appellate system."[16] It follows *a fortiori* that a state is free to condition access to its appellate system upon fulfillment of certain reasonable requirements which serve legitimate state purposes, such as the payment of filing fees.

Jaffer's attendance and participation at the Miami City Commission hearing on the Development Order, like the hearing before the county agency afforded to the unsuccessful appellant in *Ortwein*, satisfied the requirement of procedural due process.[17]

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[15]*Id.* at 659-60.

[16]*Id.* at 660.

[17]Jaffer has never alleged that the hearing before the Miami City Commission was marred by any constitutional deficiencies. *Cf. Goldberg v. Kelly*, 397 U.S. 254 (1970).

Furthermore, this case does not involve the deprivation of a fundamental right. This Court has held that the constitutional significance of a debtor's interest in obtaining a discharge, or of an indigent's interest in contesting a reduction of welfare benefits, is not sufficient to support a due process attack on court filing fees. *United States v. Kras*, 409 U.S. 434 (1973); *Ortwein v. Schwab*, 410 U.S 656 (1973). Such interests, while not significant enough, are manifestly more important than Jaffer's purported individual interest in contesting the City of Miami's Development Order. Jaffer's comparison of his purported interest to an individual's interest in his or her own marriage relationship, which this Court vindicated by striking down Connecticut's filing fee requirement in divorce actions, is absurd. *Boddie v. Connecticut*, 401 U.S. 371 (1971).

Although it is not properly before this Court on this appeal, it is similarly evident that the question of the validity of Florida's insolvency statute, as applied to Jaffer, does not present a substantial federal question. An indigent is not entitled to proceed *in forma pauperis* as a matter of right; such a proceeding is a privilege conferred by statute.[18] The statute is presumptively constitutional.[19] The statute's requirement that an indigent furnish some certification as to his indigency and the probable merit of his claim is a rational one that serves legitimate state purposes. It furthers the state's interest in having its citizens fund the courts by conferring free access to the courts only to those citizens who would otherwise be totally precluded from using them.[20] It also prevents abuse of the judicial system by restricting the flood of frivolous litigation and appeals which would arise if there were no limitations on who could proceed *in forma pauperis*.

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[18]*See* Annot., 6 A.L.R. 1281, 1282 (1920).

[19]*State v. Rodriquez*, 365 So.2d 157 (Fla. 1978); *Belk-James, Inc. v. Nuzum*, 385 So.2d 174 (Fla. 1978); *State v. McDonald*, 357 U.S. 405 (Fla. 1978).

[20]*See* the well-reasoned opinion of the Washington Supreme Court in *Carter v. University of Washington*, 536 P.2d 618 (Wash. 1975).

CONCLUSION

Mr. Jaffer's appeal should be dismissed. In the alternative, it is respectfully submitted that this Court should affirm the order of the Supreme Court of Florida.

Respectfully submitted,

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APPENDIX

IN THE CIRCUIT COURT OF THE
ELEVENTH JUDICAL CIRCUIT IN
AND FOR DADE COUNTY, FLORIDA

APPELLATE DIVISION

CASE NO. 79-166-AP

B.A.Y. COMMITTEE, Joel Jaffer, Chairman,
Plaintiffs,

v.

CITY OF MIAMI, A municipal corporation in the State of Florida, HOLYWELL CORPORATION, a corporation with offices in Washington, D.C.
Defendants.

ORDER ON MOTION TO DISMISS OR STRIKE

This cause is before the Court upon "Motion to Dismiss or Strike Purported Administrative Appeal", filed by Holywell Corporation. A response has been filed by Joel Jaffer, in proper person, and as Chairman of B.A.Y. Committee.

A review of the motion and the response reveals that the appeal is from a resolution of the City of Miami Commission passed and adopted on May 24, 1979, authorizing issuance of a development order for the Ball Point Project. Holywell Corporation argues the appeal should be dismissed because Joel Jaffer and B.A.Y. Committee have no standing to appeal the order, and because the order is one which may not be appealed to

this Court. A close reading of the authorities cited by Holywell Corporation indicates they are correct on both counts. Section 380.07(2) F.S., provides that any Development Order of a local governmental body may be appealed to the Florida Land and Water Adjudicatory Commission by filing a Notice of Appeal with the Commission. Such an appeal may be taken only by ". . . the owner, the developer an appropriate regional planning agency by vote at a regularly scheduled meeting, or the state land planning agency . . . ." It is apparent Jaffer and B.A.Y. Committee are not any of the named parties having standing to file such an appeal, and the appeal was not filed with the Florida Land and Water Adjudicatory Commission, hence the appellants have failed to exhaust their administrative remedies. See General Electric Credit Corporation v. Metropolitan Dade County, 346 So.2d 1049 (D.C.A. 3d 1977); Sarasota County v. General Development Corporation, 325 So.2d 45 (D.C.A. 2d 1976); and Sarasota County v. Beker Phosphate Corporation, 322 So.2d 655 (D.C.A. 1st 1975).

The Notice of Administrative Appeal filed by B.A.Y. Committee, Joel Jaffer, Chairman, is therefore dismissed.

DONE AND ORDERED in Chambers at Miami, Dade County, Florida, this 21st day of June, 1979.

/s/
HERBERT STETTIN, Judge

cc: Mahoney, Hadlow and Adams
George F. Knox, Jr.
Joel Jaffer, B.A.Y. Chairman